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CURRENT TOPICS

Conveyancing Courtesies

THERE is no end to the ways in which solicitors can be helpful to each other and to posterity. All conveyancers have known the dismay which is caused when a Land Charges certificate arrives with a host of entries, or even one or two, which cannot be identified. We learn from a letter in the April issue of the *Law Society's Gazette* that it is the practice of the Treasury Solicitor to endorse on a conveyance engrossed by his office the Land Charges registration number relating to an entry in the register protecting a land charge created in that conveyance. We should not be discouraged by the fact that it would take many years for the practice to become sufficiently common to be really useful but there is everything to be said for beginning. The courtesies of conveyancing are on the increase. It is now a practice almost universal to send copies of preliminary enquiries, although not many go as far as the vendor's solicitor who recently sent the replies before he received the enquiries. Equally it is the exception to find drafts unaccompanied by copies, although it is commoner to be supplied with an uncompleted printed form which occasionally is charged for. Some vendors' solicitors try to expedite matters by supplying four copies of the plan as well as the names and addresses of the local authorities, in order that the purchaser's solicitor may not be slothful in making his local searches.

Two More Bites

ONLY a few weeks after the County Court Practice, 1956, is published we must begin to paste little bits of paper in it. Whereas we hailed with enthusiasm the increases in costs which are incorporated in the new edition, our excitement is subdued by the increases in plaint and other fees prescribed by the County Court Fees (Amendment) Order, 1956 (S.I. 1956 No. 501 (L.4)), which comes into operation on 1st May next. We wonder whether it is a good thing to multiply the number of separate plaint fees or whether the fees on small claims should climb so steeply. Whereas the maximum of £3 is now reached at £101, under the new scale it will be reached at £64. On the other hand, we assume that it costs as much to issue a summons for £5 as for £100. Another piece of paper in the "Practice" is called for by the County Court (Amendment) Rules, 1956 (S.I. 1956 No. 471 (L.3)), which came into operation on 10th April last but which happily do not deal with anything of great moment, being limited to such matters as appeals to the Court of Appeal under the Representation of the People Act, 1949, fees paid to interpreters and the form of indorsement of service of a summons on a limited company.

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Costlier Writs and Petitions

On the same date on which plaint fees in the county court are increased, 1st May next, the cost of a High Court writ will go up from 30s. to £2, as also will originating summonses requiring appearance and originating petitions. This is one of the effects of the Supreme Court Fees (Amendment) Order, 1956 (S.I. 1956 No. 503 (L.6)), which also abolishes the present fee on entering or amending an appearance, increases the fee on filing a petition in a matrimonial cause or for a declaration of legitimacy from 10s. to £1, and doubles the present fee of 5s. on sealing a summons or notice under Ord. 30, r. 7 (3). Fee 121 (allowance of result of taxation) is also increased from 10s. to 14s., which includes the cost of drawing up and where necessary engrossing the certificate and an office copy.

Time for Stamping after Execution

A change of stamping practice which will simplify by introducing greater uniformity has been introduced by the Commissioners of Inland Revenue in exercise of their powers under s. 15 (3) (*b*) of the Stamp Act, 1891. As a result of representations from the Council of The Law Society, according to the April issue of the *Law Society's Gazette*, the Commissioners have extended the time limit for the stamping of the following instruments from fourteen days to thirty days after execution: (1) Agreements under hand only (liable to a fixed duty of 6d.); (2) Agreements for letting furnished houses or furnished apartments for a term less than a year, or any duplicate or counterpart thereof; (3) Leases, and agreements for leases, for any definite term not exceeding a year, of any dwelling-house or part of a dwelling-house at a rent not exceeding the rate of £40 per annum or any duplicate or counterpart thereof. The position of these instruments is assimilated to that of other instruments (excluding instruments for which "other express provision is made": see s. 15 (1) and (3) of the Stamp Act, 1891) in respect of which the time limit imposed by the Commissioners is thirty days. It also conforms with the statutory limit fixed by s. 15 (2) (*a*) and (3) (*a*) in the cases to which those provisions apply.

The Food Hygiene Regulations, 1955

These regulations were reviewed *ante*, p. 4, and the writer of that article anticipates that there will be a number of prosecutions under them. It is of interest to note that reg. 34 provides that s. 113 of the Food and Drugs Act, 1955, shall have effect for the purposes of the regulations as if references therein to that Act were references to the regulations. That section replaces s. 83 of the Food and Drugs Act, 1938, and allows a person against whom proceedings are brought to have any other person to whose act or default he alleges that the contraventions in question are due brought before the court. The original defendant, if he proves that the contravention was due to that person's act or default and, in addition, proves that he himself has used all due diligence to secure that the provisions in question were complied with, shall be acquitted of the offence. The section provides the procedure to be followed and it also provides that the local authority may itself proceed against the second defendant direct without first summoning the first defendant, e.g., it can go against the wholesaler without summoning the retailer. It will be noted that the original defendant, if he is in fact summoned, does not escape conviction merely by proving that the contravention was due to the act or default of some other person; he must prove in addition that he himself used all due diligence and he must also have actually summoned that person as a co-defendant with him. It will not suffice to save him from conviction if he merely proves that the default was due to another person, if the latter is not before the court.

Sale of Land and Schedule A Claims

In the current issue of the *Law Society's Gazette* attention is drawn by the Council to the desirability of normally including in a contract for the sale of land a clause on the lines of General Condition 24 (3) of The Law Society's Conditions of Sale, 1953. That condition provides that the vendor shall, at the request and cost of the purchaser or his solicitors, supply him or them with such information as may be in the vendor's possession and as the purchaser or his solicitors may reasonably require for the purpose of preparing or completing a claim to any tax relief or allowance granted by the Income Tax Act, 1952, or any other statute or for ascertaining the purchaser's liability to income tax. While recognising that there may be occasions on which a vendor is not prepared to agree to the inclusion of such a clause in the contract, the Council stated that they had been approached on the matter by the Institute of Chartered Accountants in England and Wales, and that it was normally desirable to include such a clause either expressly or by reference in the contract of sale.

Professional Education: Overlapping of Courses

"It must be borne in mind," says a special committee of the Institute of Chartered Accountants in Scotland in a recent report, that "the needs of the budding C.A. and those of the law student are very different: the former needs to give considerable time to company law and bankruptcy, for instance, while the law student will be interested in many subjects, such as conveyancing and reparation, with which the C.A. student has no concern. Further, experience shows that the method of presentation of these subjects which are common to both groups of students needs to be different if the needs of each group are to be satisfactorily met. For some time past the C.A. students and the law students in mercantile law at Glasgow University have taken separate courses. Edinburgh University has recently provided a separate two-term law class for C.A. students, and the syllabus for that class, which was discussed between the professors concerned and representatives of the institute, is specially adapted to the C.A. student's requirements. The committee welcomes this development and recommends that negotiations with the other Scottish universities be opened with a view to securing similar arrangements by them so far as may prove to be practicable." It is very doubtful whether such differentiation would be a good thing in this country. There is no reason why subjects of special importance to accountancy students should not be treated with reference to their needs, without detriment to their value to a general audience of law students.

FOR LIFE OR JOINT LIVES?

THE recent case of *Bradley* v. *Bradley* [1956] 2 W.L.R. 654 ; *ante*, p. 173, will come as an unwelcome surprise to those who have to advise husbands faced with proceedings for wilful neglect to maintain. The short point of the decision is that the court has power under the Matrimonial Causes Act, 1950, s. 23, to order periodical payments to the wife which can be secured for the wife's life and not merely for the period of joint lives.

It is proposed to examine this case and to suggest, with the greatest respect, that it is not correctly decided.

It is necessary first to consider the extent of the power of the court to order periodical payments on non-compliance with a decree of restitution. The relevant authority is the Matrimonial Causes Act, 1950, s. 22 (3), which provides :

> "Where any decree for restitution of conjugal rights is made on the application of the wife, the court, at the time of the making of the decree or at any time afterwards may, in the event of the decree not being complied with within any time limited in that behalf by the court, order the respondent to make to the petitioner such periodical payments as the court thinks just, and the order may be enforced in the same manner as an order for alimony."

Subsection (4) provides :

> "Where the court makes an order under the last foregoing subsection, the court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife the periodical payments . . ."

This section is a re-enactment of s. 187 of the Judicature Act, 1925, which itself was a verbatim reproduction of the Matrimonial Causes Act, 1884, s. 2.

The first material authority is *Clutterbuck* v. *Clutterbuck* (1913), 108 L.T. 573, where a wife had obtained a decree of restitution of conjugal rights with which the husband did not comply. The wife applied for periodical payments under s. 2 of the Matrimonial Causes Act, 1884, and the registrar reported submitting that payments should be made to her secured "for joint lives." Application was made for variation of the report so that the payments should be secured for life and not merely joint lives. The judgment of Bargrave Deane, J., was nothing if not brief. The whole judgment was : "I think it is clear that the court has a discretion under the section, and, taking into consideration the respective ages of the parties, I shall vary the report as asked for by the petitioner."

Clutterbuck *v.* Clutterbuck not binding

Then comes the well-known decision of *Tangye* v. *Tangye* [1914] P. 201 that the periodical payments to be ordered on non-compliance with the decree of restitution could only be for joint lives and that, although these payments could be secured, that did not alter the duration of the payments. In his judgment, Sir Samuel Evans, P., said : "It will be observed that, if the petitioner, instead of resting upon the order for restitution, desired to proceed to obtain a decree for judicial separation under s. 5 of the Act (i.e., of the Matrimonial Causes Act, 1884) the only pecuniary relief which she could obtain would be an order for alimony, subject to the power of the court to alter, suspend or end it as hereinbefore stated. She could not obtain an order for payment of alimony for the term of her life. I cannot think that the Act intended that the periodical payments during the disobedience of the order for restitution should be more fixed or permanent or extended for a longer term than the alimony obtainable if the further remedies towards judicial separation were pursued and the consequent relief obtained."

The President regarded *Clutterbuck* v. *Clutterbuck* as incorrectly decided and said he was satisfied that during the thirty years since the passing of the Matrimonial Causes Act, 1884, an order for periodical payments had never been made for longer than the joint lives, except in the case of *Clutterbuck* v. *Clutterbuck*, which he thought need not be regarded as a binding authority on the point.

The correctness of *Tangye* v. *Tangye* has never been challenged and to-day it is regarded as well settled that the only power for the court to order periodical payments in favour of the wife on non-compliance with a decree of restitution of conjugal rights is to make the payment for a period not exceeding the joint lives of the spouses.

Orders for wilful neglect

The power of the High Court to make orders for periodical payments on the ground of wilful neglect to maintain was first created by the Law Reform (Miscellaneous Provisions) Act, 1949, s. 5, which section was re-enacted by the Matrimonial Causes Act, 1950, s. 23. Subsection (1) is as follows :—

> "Where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the court, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make to her such periodical payments as may be just ; and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation."

Subsection (2) of s. 23 provides :—

> "Where the court makes an order under this section for periodical payments it may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife the periodical payments . . ."

It will be noted that the wording of this section is very similar to the wording of s. 22 already quoted. In both sections the relevant words are "the court . . . may . . . order the husband to make to her such periodical payments as may be just."

The immediate point then arises, if *Tangye* v. *Tangye* is correct in its application to s. 22, why does it not also apply to s. 23 ?

By way of contrast to the wording of ss. 22 and 23 reference should be made to the Matrimonial Causes Act, 1950, s. 19 (2), which provides that :—

> "On a decree for divorce or nullity of marriage the court may order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life . . ."

In no section of the Matrimonial Causes Act dealing with financial provisions for the wife other than s. 19 (2) will any reference be found to a payment being made to the wife for her life.

Cases since the 1949 Act

It is now necessary to turn to the cases decided since the Law Reform (Miscellaneous Provisions) Act, 1949, took effect,

In *Scott* v. *Scott* (*No.* 2) [1951] P. 245, Hodson, J. (as he then was), dealt with the effect of s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949, and contrasted the position of the wife under that Act with the position of the wife who has obtained a decree of divorce. The following words will be found at p. 248: "If the wife has left her husband because of his cruelty, of which she is complaining, she can take proceedings against him on the ground of that cruelty either for a judicial separation or for divorce. In those proceedings she is entitled to claim alimony *pendente lite* and in the event of her succeeding in those proceedings she is entitled to claim a permanent provision for herself whether by way of alimony or by way of maintenance. In the event of a divorce, she is entitled to claim maintenance to be secured to her for her life as opposed to the period of joint lives, which appears to be the utmost that can be obtained under s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949."

The next case is *King* v. *King* (*No.* 2) [1954] P. 55, which is a Court of Appeal decision to the effect that a wife can obtain an order under the Matrimonial Causes Act, 1950, s. 23, on the ground of wilful neglect to maintain even though she has already obtained a decree of judicial separation. The point of the case is really on those words of s. 23 (1) which provide that where a husband has been guilty of wilful neglect to provide reasonable maintenance . . . the court, "if it would have jurisdiction to entertain proceedings by the wife for judicial separation," may make the order in favour of the wife. In *King* v. *King* the wife had already obtained a decree of judicial separation, so it was argued on behalf of the husband that as the court had already made the decree it no longer had jurisdiction to entertain proceedings for judicial separation and, therefore, could not make an order in favour of the wife under s. 23. The Court of Appeal unanimously decided that the word "jurisdiction" in s. 23 was used to denote the personal qualifications of domicil or residence required of the parties and had nothing to do with the validity or merits of a claim for judicial separation. Here the Court of Appeal followed the previous court of first instance decision of *Woodward* v. *Woodward* [1952] P. 299. Unfortunately, in his judgment Denning, L.J., used the following words: "The question is whether the wife who has obtained a decree of judicial separation can avail herself of s. 23. The husband contended she has no right to apply under s. 23 and that her only right is to apply for alimony under s. 20 (2) of the Act. This would look, at first sight, to be a somewhat barren dispute. It would not seem to matter under which section she applies so long as an order is made for payments to her. But the difficulty is this: under s. 23 the court can order the husband to secure the payments by a deed of covenant, depositing some of his property as security and covering her, not only during their joint lives, but also during widowhood; whereas under s. 20 the court has no power to order any such security to be provided for her." The vital words there are "but also during widowhood." No authority was cited by the learned lord justice in support of that statement and it has generally been regarded as having been a statement made *per incuriam*. It is understood by the writer that the actual order made in *King* v. *King* was one for joint lives and that no attempt was made to rely on the words quoted in order to try to get security for the wife for her life.

Next comes *McLellan* v. *McLellan* [1954] P. 138. The short point of this case is that the court has power under s. 23 to order the periodical payments to run from the date of the summons once wilful neglect to provide reasonable maintenance has been proved. The importance of this is that there is no power under s. 23 to order alimony pending suit, and so if the order for periodical payments only took effect as from the date of the order there might be cases of delay and obstruction in which the wife would be deprived of her payments for weeks or even months.

Now, in the report of this case in the Law Reports that is the sole point of the decision and there is nothing said as to the duration of the payments, but in the report in [1954] 1 All E.R. 1, it is stated in the recital of the facts of the case that the husband was ordered by Karminski, J., to pay £850 a year, less tax, during joint lives, together with a further £150 a year, less tax, to be secured to the wife for her life. This statement, however, appears only in the recital of the facts and not in the judgment, which is reported only on the question already described.

The latest case

It is with this background that *Bradley* v. *Bradley* is at last reached.

The material facts of the case are that the husband was a man of very considerable means with capital assets of nearly £100,000 and with an average income for the last three years of some £8,000. The parties separated and the wife continued to reside in the matrimonial home, for which the husband continued to pay all outgoings. In addition the husband had been paying his wife the sum of £7 a week in cash and there was some provision for the purchase of clothes on credit. The wife applied under s. 23, alleging that provision made for her was not sufficient and did not provide her in all circumstances with reasonable maintenance. After reviewing the facts, Willmer, J., decided that the provision for the wife was not reasonable and made an order for the payment of periodical payments at the rate of £1,800 a year, less tax. Then the learned judge went on to consider whether any part of that sum should be secured and whether the security could be ordered only for joint lives or whether the wife "is entitled to a secured provision for her life as she could be, for instance, in the event of divorce proceedings."

The learned judge said that counsel for the husband had drawn his attention to the actual wording of s. 23 of the Matrimonial Causes Act, 1950, and to the *dictum* of Hodson, J., in *Scott* v. *Scott*, to which reference has been made. On the other hand, Willmer, J., said he had the observations of Denning, L.J., in *King* v. *King* (quoted above), and he also referred to the statement in the recital of facts in *McLellan* v. *McLellan* (also quoted above). Then Willmer, J., concluded his judgment: "Faced as I am with *dicta* both ways, I think that the only course I can take is to follow what has been already done by Karminski, J. (i.e., in *McLellan* v. *McLellan*), especially as that course is supported by the *dictum* pronounced in the Court of Appeal." For that reason an order was made that part of the wife's periodical payments should be secured to her for her life.

Tangye v. *Tangye* appears to have been cited in argument but was not referred to in the judgment, nor did Willmer, J., refer to the similarity in wording between ss. 22 and 23 and the difference in wording between these sections and s. 19 to which reference has already been made. As he himself said, the recollection of counsel for the husband in *Bradley* v. *Bradley*, who was also concerned in *King* v. *King*, was that there was no argument on the point of the duration of the wife's provision. As already indicated, the *dictum* of Denning, L.J., was not in the least material to the decision in *King* v. *King* and would appear to have been

made without careful consideration of the point concerned. *McLellan* v. *McLellan* can scarcely be taken as an authority in view of the state of the report.

On the other hand there is the definite *dictum* of the very experienced Hodson, J., in *Scott* v. *Scott* which is entirely consistent with *Tangye* v. *Tangye*, and this latter decision has great relevance owing to the exact similarity of the wording of ss. 22 and 23.

Lastly, it is surely pertinent to comment that if s. 23 (or s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949) had intended to give the wife a right to payments for her life and so give her a greater right than she possesses after obtaining a decree of restitution or of judicial separation, there would have been some definite indication that the payments were to be made "for life," as appears in s. 19, and the wording would not have been so similar to s. 22.

For these reasons, therefore, it is submitted, with some confidence, that *Bradley* v. *Bradley* is incorrectly decided, and it is to be hoped that the matter will before long receive the attention of the Court of Appeal.

E. R. DEW.

COURT OR TRIBUNAL?

MIXED LAW AND POLITICS

THE Restrictive Trade Practices Bill now before Parliament, as briefly noted at p. 138, *ante*, and mentioned in an article at pp. 178 and 195, *ante*, contains provisions setting up a Restrictive Practices Court. This court is something of a mixture of an ordinary court and a tribunal, and the proposals for its formation, coming as they do when the whole problem of administrative tribunals and procedures is under investigation by the Franks Committee, is of particularly topical interest.

The function of the proposed court is to examine judicially restrictive trading agreements registered with the Registrar of Restrictive Practices to be appointed under the new provisions, and to prohibit those found to be contrary to the public interest.

Had this Bill been presented at an earlier date, it is very likely that it would have provided for the setting up not of a court but of another administrative tribunal. Welcome as is the setting up of a court instead of a tribunal, the welcome must in the writer's view be offset by a serious danger to the reputation of British justice, since its decisions are likely to be arrived at from a mixture of law and politics.

To enable the reader to appreciate the danger, it is necessary to refer briefly to the proposed constitution of the court.

The court is to consist of five judges and not more than nine other members (cl. 2 (2)). Of the judges, three are to be puisne judges of the High Court nominated by the Lord Chancellor, one a judge of the Court of Session in Scotland and one a judge of the Supreme Court of Northern Ireland (cl. 3). The other members of the court are to be appointed by Her Majesty on the recommendation of the Lord Chancellor and are to hold office for such period, not being less than three years, as may be determined at the time of appointment. Any person so recommended for appointment "shall be a person appearing to the Lord Chancellor to be qualified by virtue of his knowledge of or experience in industry, commerce or public affairs" (cl. 4).

The court may sit either in private or open court, at the Royal Courts of Justice or such other place as the Lord Chancellor may appoint, as a single court or in two or more divisions, and when sitting is to consist of a judge, who is to preside, and at least two other members (Sched., paras. 2, 3 and 4). The decision of the court, except on a question of law, is to be taken by all the members of the court sitting, and, in the event of disagreement, is to be a majority decision, the presiding judge having in the event of an equality of votes a second or casting vote (Sched., para. 5). On a question of law the opinion of the judge or judges sitting is to prevail (Sched., para. 5). The judgment is to be delivered by the president (Sched., para. 6). The decision of the court on a question of fact is to be final, but there is to be an appeal to the Court of Appeal on a question of law (Sched., para. 7).

It will thus be seen that the constitution attempts to preserve the supremacy of a specially appointed and readily changeable lay membership with a final decision on fact or policy, characteristics of a tribunal, while at the same time infusing judicial control and procedure.

The qualifications of the "other members" are not professional, e.g., in accountancy, but are so widely drawn as to admit the recommendation of anyone who has engaged in industry, business or politics. The question of public interest in relation to restrictive trade practices is rightly or wrongly one of considerable political concern, as is more than ever evident from the second reading debate on the Bill, and one is driven reluctantly to the conclusion that the membership and attitude of the court will be liable to change according to the political party for the time being in power. As the decision of the court is to be a majority one, and a single judgment is to be delivered, the judges will be identified in the public mind with the corporate acts of the court, and consequently with political tendencies. This and the possible capriciousness of the decisions of the court, resulting from its changing membership, might do untold harm to the cause of British justice.

The remedy for this, in the writer's view, serious defect might be found in one of three ways which are set out in order of preference :—

(1) That the court should be made a division of the High Court, the lay members being dispensed with altogether, or, possibly, being utilised as assessors, with suitable professional qualifications, to advise the judge on matters of business or industrial practice.

(2) That the functions of the judge and lay members should be clearly divided and assimilated to the respective functions of judge and jury.

(3) That the court should be termed a tribunal and dissociated from the High Court bench, but required to observe judicial procedure and be presided over by some specially appointed member of the legal profession.

The courts have long been concerned with questions of public interest or policy in relation to contracts, including questions of restraint of trade, and in relation to conspiracy in the law of torts. What is reasonable and what is not in respect of particular circumstances is their almost daily consideration. There would seem, therefore, to be no reason why a judge of the High Court should not be competent on

his own to decide on the evidence before him whether or not any particular restrictive trading agreement is contrary to the public interest. This is more particularly the case as the Bill lays down in very considerable detail, as mentioned at p. 196, *ante*, the circumstances in which the proposed court can find an agreement not to be contrary to the public interest.

If it be thought undesirable for a judge by himself to pronounce on what is reasonable or unreasonable as between the parties to an agreement and the public on the ground that this is a matter of policy or personal inclination or otherwise rather than of justice to be meted out on facts proved in evidence, then at least let the judges, and with them the British judicial system, be seen to be separated from the decisions given and political influences in one of the other ways suggested above.

If this separation is not effected, then it appears most probable that much of the suspicion and criticism which has rightly or wrongly in the past attached to administrative tribunals will begin to attach to the courts. R. N. D. H.

Company Law and Practice

THE UNPAID CREDITOR OF A COMPANY

In this article it is proposed to consider, from the point of view of a creditor, some of the legal and practical problems which may arise when a limited company runs into financial difficulties which the directors hope are temporary, but which may prove to be permanent.

At the outset the practical nature of the problem must be stressed. This is essentially the type of case which must be dealt with in the light of its own particular facts, of which a knowledge of the background, and the parties and personalities involved, is probably the most important.

If the amount involved is large, and there seems a reasonable chance of recovery, then resort to legal process at an early stage may be advisable. Where, however, the amount involved is small, experience shows that it is frequently better to write it off at once rather than embark on the hazards of litigation which, even if successful, will probably cost, directly and indirectly, more than the amount recovered. A third, and frequently the most rewarding, course is to attempt to reach a settlement by negotiation.

The debtor company

Half the battle in a case of this type consists in an accurate assessment of the financial position of the debtor company. Stripped of all its trimmings, the basic problem is a financial one: the debt is, to all intents and purposes, loan capital, unsecured and unremunerated.

Some information as to the financial position of the debtor company can be obtained from a search of its file at Bush House. This will reveal particulars of the capital structure, whether there are any amounts uncalled on the share capital, particulars of the directors and members and, most important of all, what charges, if any, have been created by the company on the security of its assets. Details of the directorate are important, as sometimes, in the case of a small company, they may be willing to put up some money to pay off a creditor who is pressing strongly, or perhaps to guarantee the debt.

Copies of the company's accounts for the last few years should be examined. Although, unless the company is an exempt private company, these should also be filed at Bush House, the creditor client should be asked to procure accounts from the debtor company. Not only can they then be examined at leisure, but the promptness and willingness with which they are supplied is sometimes a useful guide as to the company's attitude towards its debt.

The ultimate decision as to what action, if any, is to be taken must be made by the client in the light of normal commercial considerations, such as the risk of losing a customer, his assessment of the debtor company based on his knowledge of, and contacts with, its officers and, in particular, the state of its finances as revealed by its accounts and the register of charges. The client may also have private sources of information available through trade channels. The client will expect to be advised on the legal aspects of his problem, and the remainder of this article will deal with some of them.

The two main remedies at law are to sue for the debt, and to issue execution on the judgment if not satisfied, or to present a winding-up petition. They are not alternative, and as will be seen both may be exercised in appropriate circumstances.

Liquidation

If the creditor decides not to take any action, and the company subsequently goes into liquidation, then he will rank as an ordinary unsecured creditor. His debt will rank after the winding-up costs and liquidator's remuneration, those debts which rank for preferential payment by virtue of s. 319 of the Companies Act, 1948, and the claims of creditors with fixed or floating charges, who are entitled to full satisfaction out of the property which is subject to their security before any balance is available for the unsecured creditors.

To sue or to petition

If the creditor decides to take legal action he can either sue for his debt and, if his judgment is not satisfied, levy execution, or he can present a winding-up petition without first suing. He can also present a winding-up petition as an unsatisfied judgment creditor. Of the two remedies it is usually better to go for a winding up at the outset unless it has become obvious that in a winding up there will be nothing for the unsecured creditors. As will be seen, a judgment creditor has few, if any, practical advantages over an ordinary creditor and many pitfalls lie in his path.

It must be remembered as a matter of practice that the creditor will seldom, if ever, be the sole creditor; there will be a number of other creditors keeping a watchful eye on the company's affairs and if it becomes known that there is an unsatisfied judgment out against the company someone is sure to present a winding-up petition. In such circumstances the provisions of the Companies Act, 1948, are designed to prevent a judgment creditor from obtaining any advantage from his judgment unless he has completed execution or attachment.

Execution by a judgment creditor

By s. 325 (1) of the Companies Act, 1948, where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up. There are three provisos in the subsection, two of which are of importance in the present discussion. Proviso (*a*) substitutes for the date of the commencement of the winding up the date on which the creditor receives notice of a meeting at which a resolution for voluntary winding up is to be proposed. As such a winding up would, in the nature of things, be a creditors' voluntary winding up, notice would, in fact, be sent to the creditor simultaneously with the sending of notices of the meeting to the members (s. 293 (1)).

Proviso (*c*) to s. 325 (1) enables the rights conferred by the subsection on the liquidator to be set aside by the court in favour of the creditor to such extent, and subject to such terms, as the court may think fit. This proviso was new law introduced by the 1948 Act and gives the court a much wider discretion than formerly to allow an execution, begun before the commencement of the winding up, to be completed on such terms and conditions as it might choose to impose: *Re Grosvenor Metal Co., Ltd.* (1949), 65 T.L.R. 755. Previously nothing short of a trick, or some proof of actual dishonesty, would have justified interference by the court, but now the jurisdiction is wider. In one case where, on the facts, the company had no merits Wynn Parry, J., held that he ought to exercise the jurisdiction in the applicants' favour so that other creditors should not come in and claim through the company, and so deprive the applicants of the fruits of their judgment, which they would have gathered in but for the conduct of the company: *Re Suidair International Airways, Ltd.* (1950), 66 T.L.R. (Pt. 2) 909.

Section 325 (2) enacts that, for the purposes of s. 325, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver. Section 326 (1) enacts that where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator. Section 326 (3) confers a discretion on the court in similar terms to proviso (*a*) to s. 325 (1).

By s. 326 (2), where the execution is under a judgment for a sum in excess of £20, and the goods are sold or money is paid to avoid the sale, the sheriff after deducting the costs of the execution must retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company or of a meeting to pass a resolution for voluntary winding up, and an order is made or a resolution passed, as the case may be, the sheriff must pay the balance to the liquidator, who is entitled to retain it as against the execution creditor. The effect of s. 326 (2) is not to avoid the execution, but to deprive the execution creditor of the proceeds of sale, and to make them available for the general body of creditors.

The position in such circumstances was considered by Morris, J., in *Bluston & Bramley, Ltd.* v. *Leigh* (1950), 66 T.L.R. (Pt. 2) 103, where his lordship held that the words "as the case may be," in s. 326 (2), meant that the subsection applied only if notice of a petition was followed by an order, or notice of a meeting was followed by a resolution for voluntary winding up; as in that case notice of the meeting had been followed by a compulsory winding-up order, s. 326 (2) did not apply. His lordship also held that, as the proceeds of execution had not been paid to the judgment creditors by the date of the winding-up order, the effect of s. 325 (1) was to negative the title of the judgment creditors to the money, and the sheriff was, therefore, justified in handing over the proceeds of execution to the liquidator.

Winding-up petition

A more satisfactory remedy for a creditor may be to present a winding-up petition. There is one important practical point to be considered before this course is decided upon. When the general financial assessment of the debtor company is made it may be evident that in a liquidation there will be little or nothing available for the unsecured creditors. For example, there may be a great deal of "water" in the balance sheet and some substantial charges registered against the company. In such a case, it might be more advantageous to sue to judgment and to levy execution in the hope that speedy action will be successful in negotiating all the obstacles safely. There is no general rule: it must be a matter for individual decision in every case.

Section 224 (1) of the Companies Act, 1948, provides that a winding-up petition may be presented by any creditor: the creditor need not be a judgment creditor. The petition would be presented on the ground provided in s. 222 (*e*); the company is unable to pay its debts. By s. 223 of the Act a company is deemed to be unable to pay its debts if a creditor to whom the company owes more than £50 sends to the registered office of the company a demand under hand requiring payment, and the company has failed to pay or compound the debt within three weeks, or if execution or other process issued on a judgment in favour of a creditor is returned unsatisfied in whole or in part, or if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court must take into account the contingent and prospective liabilities of the company.

The effect of s. 310 of the Companies Act, 1948, is that a creditor of a limited company is, as against the company, *prima facie* entitled *ex debito justitiae* to an order for the compulsory winding up of the company, even where it is already in voluntary liquidation, and he is not obliged to prove that he will be prejudiced if the voluntary liquidation is allowed to continue: *Re James Millward & Co., Ltd.* (1940), 56 T.L.R. 330. This rule applies only as against the members. Where a judgment creditor petitions for the compulsory winding up of a company in voluntary liquidation the court is bound to have regard to the wishes of the other creditors, and will not make an order if the majority of the other creditors wish the voluntary liquidation to continue, unless some ground of hardship or injustice to the petitioning creditor can be shown: *Re Home Remedies, Ltd.* (1942), 59 T.L.R. 31; *Re B. Karsberg, Ltd.* [1956] 1 W.L.R. 57; *ante*, p. 33.

It is assumed in this article that there is no dispute as to the debt; a winding-up petition is not the proper procedure where there is a bona fide dispute as to the debt (nor should it be threatened). In such a case the petition will be dismissed, leaving the creditor to establish the debt by action. However, there must be a substantial ground for dispute and the fact alone that unconditional leave has been given to defend an action for the debt will not preclude the court from considering the petition, and finding on the evidence that the company is unable to pay its debts: *Re Welsh Brick Industries, Ltd.* [1946] 2 All E.R. 197.

Compromise or settlement

So far we have considered judicial sanctions against a company unable to pay its debts. It must not be overlooked that the sole objective must be to secure payment of the client creditor's debt and, in many cases, negotiations to this end may prove more fruitful than resort to judicial process.

It is a question of individual assessment, but there is this factor in common between the company and its creditor: if the whole life of the company is brought to an end neither of them may benefit at all, whereas if the company is nursed through a difficult period the creditor may eventually be paid in full. The snag is that many companies are apt to think that the nursing is the sole responsibility of the creditors and to wax indignant at any suggestion of a *quid pro quo*. They should be politely, but firmly, disillusioned at the outset.

A simple contract debt does not carry interest, but there is nothing to prevent a fresh agreement by the company to pay interest on the debt in consideration of the creditor forbearing to take action: such an arrangement might profitably be coupled with provision for the debt to be paid by instalments. A guarantor may be forthcoming. It may be possible to obtain some security for the debt as, for example, an assignment of debts or the execution of a debenture creating a charge on the assets, but, as will be seen, such charges may be invalid as against a liquidator. The possible effect on existing charges should also be considered: for instance, the assignment of debts may be one of the events on which the rights under an existing debenture become enforceable. All such arrangements would be subject to close scrutiny in the event of a liquidation, but provided they were entered into bona fide there is no reason why they should not withstand such scrutiny.

The two principal points to bear in mind are s. 320 (1) of the Companies Act, 1948, relating to fraudulent preference, and s. 322 (1), which provides that any floating charge created within twelve months of the commencement of the winding up is invalid unless it is proved that the company was solvent immediately after the creation, or unless cash was paid to the company at the time of, or subsequently to, the creation of the charge.

The essential element of a fraudulent preference is a dominant intention to prefer one creditor to another. Payments made in compliance with bona fide and enforceable demands by a creditor are not voidable. The pressure must be genuine and the debtor must have been under some genuine apprehension from it: *Re Boyd* (1899), 6 Morr. 209. Merely going through the motions is not sufficient. On the other hand the issue of debentures is not necessarily a fraudulent preference, even if granted in respect of an existing debt. It may well be, for example, that the issue was not made in contemplation of a winding up, but to stop the creditor from presenting a petition, that is, the dominant motive was not to prefer but to avoid a winding up: *Re Inns of Court Hotel Co.* (1868), L.R. 6 Eq. 82. As the issue is one of fact in each case there is a dearth of modern reported cases on the subject. The leading case is *Peat* v. *Gresham Trust, Ltd.* [1934] A.C. 252, where the House of Lords held that the onus is on those who claim to avoid the transaction to establish what the debtor really intended and to prove that the dominant intention was to prefer.

The object of s. 322 of the Companies Act, 1948, is to prevent insolvent companies from creating floating charges to secure past debts. The section is in terms absolute: there is no provision (as in s. 227 relating to the avoidance of dispositions after the commencement of a winding up) for the court to "order otherwise." Under s. 322 the onus is on the party who seeks to support the charge: where fraudulent preference is alleged it is on the party seeking to upset the payment.

There is nothing morally reprehensible in taking a charge to secure a past debt and, providing the company can survive a further twelve months, it will be valid. In any event the section only invalidates the charge; it does not avoid the debt. Further, if the debt secured by the charge has been paid before the commencement of the liquidation the sum cannot be recovered by the liquidator in reliance on s. 322: *Re Parkes Garage (Swadlincote), Ltd.* (1929), 45 T.L.R. 11. In such a case the liquidator might possibly be able to attack the payment as a fraudulent preference.

Conclusion

Probably the best advice to give to a client who is owed money by a company whose solvency is problematical is not to go to law until every other possibility of securing payment in whole or in part by negotiation has been tried and has failed. Even then he should be sure that there will be something left over for the class of creditor of which he is a member. If litigation is resorted to the case should be pressed firmly and, above all, with speed.

H. N. B.

DEVELOPMENT PLANS

Southend-on-Sea Development Plan

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Southend-on-Sea. The plan, as approved, will be deposited in the Municipal Buildings, Southend-on-Sea, for inspection by the public.

Development Plan for the County Borough of Burnley

On 15th March, 1956, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at the Town Clerk's Office, Town Hall, Burnley. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5.15 p.m. on Mondays to Fridays (inclusive) and between 9 a.m. and mid-day on Saturdays. The amendment became operative as from 24th March, 1956, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 24th March, 1956, make application to the High Court.

A Conveyancer's Diary

TIME FOR COMPLETION OF BUILDING CONTRACTS

I HAVE received a communication from some readers of this journal in which reference is made to a problem which the recent resurgence of house building on private account, coupled with present conditions of labour in the building industry, must have made a very common one. These correspondents find that builders, when contracting to sell a house to be erected or in course of erection, will not bind themselves in the contract to any time limit for the completion of the work, and that this is also the case where builders enter into a contract for sale of the land and simultaneously enter into a contract to build a house thereon for the purchaser. It is suggested that, although no time limit is specified in a building contract of this kind, it must be an implied term that the work be completed within a reasonable time, and also perhaps that, in the absence of any stipulation to the contrary, the builders must proceed diligently with the work, and, further, that if the builders are very dilatory the purchaser may give notice to complete within a specified period and thus make time of the essence; but no authority has been found on this point.

I, too, have been unable to find any decision on this point in relation specifically to a building contract, either in any of the recognised reports, or in the second volume of the seventh (1917) edition of Hudson on Building Contracts, a volume which has not been reprinted as a companion to subsequent editions of the first volume, and in which is to be found the late Mr. Hudson's private collection of cases on building contracts not elsewhere reported. That may at first sight seem a curious circumstance, for the situation of a builder being unable to complete a building within a reasonable time of the contract (no time having been fixed or being in the circumstances applicable) must always have been a common one; but I suppose that in the past, conditions in what used to be an extremely competitive industry made the builder reluctant to publicise any unusual delay on his part, whatever the cause, and that disputes on this point thus tended to get settled before reaching the court or, at any rate, final judgment, or were confined to the question of damages and were thus not thought worth a full report.

Right to fix reasonable time by notice

But in a recent case judicial approval was given to a passage from Halsbury's Laws of England which is directly on this point. The passage (in the section on Building Contracts in vol. 3, third ed., p. 443) is to this effect. In cases where time has not been made of the essence of the contract in the first place, or where, although time was originally of the essence, the time so fixed has ceased to be applicable by reason of waiver or otherwise, the employer has still a right by notice to fix a reasonable time for the completion of the work, and in case the contractor does not complete by that time, to dismiss the contractor, just as a vendor would be entitled to rescind the contract in the case of a contract for the sale of land. The decisions which were cited in support of this statement in earlier editions of Halsbury were *Taylor* v. *Brown* (1839), 9 L.J. Ch. 14, a case of a contract for the sale of land pure and simple, and *Lowther* v. *Heaver* (1889), 41 Ch. D. 248, a case on a builder's contract, but a very special one. But in *Charles Rickards, Ltd.* v. *Oppenheim* [1950] 1 K.B. 616, to which the reader is now also referred in this connection in the current edition of Halsbury, Singleton, L.J., cited this passage with approval as a statement of the law as to a contract for the performance of works.

So far so good: my correspondents' guess of what the law is or should be has proved a very good one. But when it comes to applying it to a given case two questions immediately arise: when does the right to serve a notice fixing a time for the completion of the work arise, and what is a reasonable time to be fixed for this purpose? This is the real, and virtually insurmountable, difficulty in these cases. Each case will, of course, largely depend on its own facts, but there is some guidance in *Rickards* v. *Oppenheim* which is helpful —not as much as one would like, but still something to guide one in this desert of authority.

The contract in that case may be taken to have been made in August, 1947, and by it contractors agreed to build a body for the defendant's motor-car chassis to be completed within six, or at most seven, months—i.e., by a date in March, 1948, at latest. The work was not completed then, and for the next few months the defendant continually pressed for its completion, and by a letter in June specified a date in July as the last date on which he would be prepared to accept completion of the contract. The contract was not completed in accordance with this letter, and the defendant claimed the return of the chassis, or its value. The effect of these dealings was held to be that time had originally been of the essence of the contract, that when the contract had not been completed by March, 1948, as originally stipulated, the defendant had waived this condition as to time, and that by his letter in June the defendant had again, as he was then entitled to, made time of the essence, and that, finally, as the work had not been completed in accordance with the time limit thus fixed, the defendant was entitled to rescind the contract and recover his chassis. Both the questions I have posed above were raised in argument in this case (of course, in relation to the particular contract) and discussed in the judgments.

Delay justifying notice

As regards the first of these questions the waiver by the defendant of the original stipulation as to time put the defendant in the same place in this respect as a purchaser under a building contract in which the builder has refused to bind himself by any stipulation as to time. That being so, the contractors argued that they were only under an obligation to complete within a reasonable time, that is, a reasonable time in the circumstances as they actually existed, and that a reasonable time for this purpose would not be exceeded if they were prevented from completing by causes outside their control—strikes, impossibility of getting materials, and so forth. It is interesting to see how the Court of Appeal dealt with this argument. Two reasoned judgments were delivered. Denning, L.J., thought that if the contract had originally been a contract with no stipulation as to time, and therefore with only the implication of a reasonable time for completion, it might have been that the contractors could have said that they had fulfilled the contract; but that was not the case before the court. The defendant had waived his right under the original contract, and it would, in the learned lord justice's view, have been most

unreasonable if the defendant had thereby prevented himself from ever thereafter insisting upon a reasonably quick completion. Singleton, L.J., who delivered the other reasoned judgment, did not deal with this point; he merely stated the facts relating thereto and by going on to deal with the other question as the substantial one, approved the decision below that the delay had been such as to justify the giving of a notice making time of the essence. Bucknill, L.J., expressed his agreement with the other members of the court without giving any reasons.

What is a reasonable time?

As to the other question, whether the notice fixed a reasonable time, Denning, L.J., cited a passage from the well-known speech of Lord Parker in *Stickney* v. *Keeble* [1915] A.C. 386, at p. 419, where the latter said that "in considering whether the time so limited [*scil.*, by a notice making time of the essence in a contract for the sale of land] is a reasonable time the court will consider all the circumstances of the case. No doubt what remains to be done at the date of the notice is of importance, but it is by no means the only relevant fact. The fact that the purchaser has continually been pressing for completion, or has before given similar notices which he has waived, or that it is specially important to him to obtain such completion, are equally relevant facts,"—to which Denning, L.J., said he would add, in the case before him, the fact that the original contract had made time of completion of the essence. Four weeks' notice had finally been given, and the judge at the trial had found that it was a reasonable notice. There was no ground for differing with that finding; the reasonableness of the time fixed by the notice had to be judged at the time at which it was given, and the fact that after it was given the contractor found himself in difficulty over materials was irrelevant. Singleton, L.J., contented himself with saying that the evidence before the judge below justified the conclusion which he had reached that the notice was reasonable, and the Court of Appeal had no right or duty to interfere with it; he then cited with approval the passage from Halsbury to which I have already referred.

The practical upshot

So far as *Rickards* v. *Oppenheim* was concerned, therefore, I think that this can be said. On the first question (was the defendant entitled to give the notice when he did?) Denning, L.J., gave some indication that he might not have come to the conclusion which he did reach if the contract had not originally stipulated a time for completion which, on the construction of the contract as a whole, was held to be of the essence. The other members of the court ignored this point. I can hardly believe that it is vital. If it is, then the purchaser under a building contract which contains no stipulation as to time (which in modern conditions, as my correspondents indicate, would mean the purchaser under virtually any such contract) would have no remedy however gross the delay, unless perhaps he would show that the contractor had abandoned all work thereon completely. Equity has always been indulgent in the matter of time in the case of contracts for the sale of land, but not as indulgent as all that: a time comes when the party in default can be served with a notice fixing a time for completion to which the court will keep him (*Green* v. *Sevin* (1879), 13 Ch. D. 589; *Smith* v. *Hamilton* [1951] Ch. 174). On principle, the rule with regard to building contracts should be at least as strict as this. On the second question, the important point made in this case was that circumstances arising after the date of the notice cannot affect the validity of the notice. That is as much of general application as, I think, can fairly be extracted from this decision, which is, moreover, somewhat weakened as a support for the case of the irate purchaser in having been an extreme case, or something near it. The original period (maximum seven months) had been exceeded by nearly 50 per cent. (three additional months) when the defendant served his notice, giving another month, and in reply to that notice the contractor was, apparently, unable to suggest any date on which the work might be actually completed.

That is all the guidance which can be obtained from the authorities on the time element in this kind of case, and very meagre it is. No useful analogy can be drawn between this kind of case and a case of delay in completing a contract for the sale of land: apart from the conditions which now often govern the latter contract, the time between signature and exchange of contracts and completion, estimated or fixed, is quite different in the two cases. One must fall back on the old advice: each case depends on its own circumstances.

"A B C"

OBITUARY

MR. J. R. BRACEWELL

Mr. James Rawstron Bracewell, solicitor, of Norfolk Street, Strand, London, W.C.2, and of Blackpool, died on 27th March, aged 62. He was admitted in 1919.

DR. F. J. O. CODDINGTON

Dr. Fitzherbert John Osborne Coddington, Stipendiary Magistrate of Bradford from 1935-1950, died on 18th March in the Canary Islands, aged 74.

MR. F. KNOWLES

Mr. Frank Knowles, solicitor, of Stockport, died on 28th March, aged 78. He was deputy town clerk of Stockport from 1919–1931, town clerk from 1931-1944 and was president of Stockport Law Society in 1939. He was admitted in 1910.

MR. L. R. MAIDMENT

Mr. Leonard Rodolph Maidment, solicitor, of Portsmouth, and for many years a Justice of the Peace, died on 27th March, aged 80. He was admitted in 1898.

MR. W. G. MORGAN

Mr. William Gwynn Morgan, solicitor and clerk to Wednesfield Urban District Council, Staffordshire, died on 10th March, aged 43. He was admitted in 1939.

MR. F. A. PLATT

Mr. Frank Arthur Platt, solicitor, of Walsall, died on 4th April, aged 71. He was a past-president of the Walsall Law Association, and was admitted in 1906.

MR. J. S. RAYNER

Mr. Joseph Sutcliffe Rayner, solicitor, of Bradford, died on 12th March, aged 78. He was admitted in 1901.

MR. A. C. WACE

Mr. Anthony Charles Wace, solicitor, of Shrewsbury, died on 3rd April. He was admitted in 1944.

MR. R. A. WOODING

Mr. Russell Asquith Wooding, solicitor, of College Hill, London, E.C.4, died on 13th March, aged 76. He was admitted in 1902.

Landlord and Tenant Notebook

PENAL ACTIONS AGAINST PROTECTED TENANTS

ONE tragi-comical result of the decision in *Sydney Bolsom Investment Trust, Ltd.* v. *E. Karmios & Co. (London), Ltd.* [1956] 2 W.L.R. 625 (C.A.) ; *ante*, p. 169, was, as was pointed out in the " Notebook " last week (*ante*, p. 258), that tenants whose tenancy would otherwise have continued to exist by virtue of Pt. II of the Landlord and Tenant Act, 1954, lost the protection of that statute in consequence of the steps they took to improve their position. Perhaps it would be more accurate to say that the loss was due to their taking one step and omitting to take another ; but, in the result, they were in the position of tenants who had given an effective common-law notice to quit. This, and the decision (Sheriff's Court) in *Baird's Executrix* v. *Wylie* [1956] S.L.T. 10, in which it was held that a defendant or defender who had consented to judgment for possession of a controlled dwelling-house, a date being specified, was entitled to " resile from the joint minute " on the plaintiff or pursuer dying before that date, suggest consideration of the question whether the actions for double value and for double rent can ever lie against ex-tenants who have held tenancies to which the Increase of Rent, etc., Restrictions Acts, 1920 to 1939, or the Agricultural Holdings Act, 1948, or Pt. II of the Landlord and Tenant Act, 1954, apply.

There is no gainsaying that the legislation last referred to has had a somewhat demoralising effect on landlords concerned. They may call themselves reversioners, but know not when the reverting will occur ; the tenants may be called termors, and the Law of Property Act, 1925, s. 1 (1), may solemnly describe the interest granted as a term of years absolute, but in their cases it seems to be qualified ; it may be for years or it may be for ever.

" Frauds committed by Tenants "

In the decade which saw the passing of the Landlord and Tenant Act, 1730, which brought into being the action for double value, and the Distress for Rent Act, 1737, which created claims for double rent, the attitude of the Legislature was different. The 1730 Act has a heading which commences with " An Act for the more effectual preventing Frauds committed by Tenants " and a preamble which begins with : " For securing to lessors and land-owners their just rights and to prevent frauds frequently committed by tenants." The preamble to the 1737 statute runs : " Whereas the several laws heretofore made for the better security of rents, and to prevent frauds committed by tenants, have not proved sufficient to obtain the good ends and purposes designed thereby, but rather the fraudulent practices of tenants, and the mischief intended by the said acts to be prevented, have of late years increased, to the great loss and damage of their lessors and landlords : for whose remedy whereof Be it enacted . . ."

Double value

Though parts of these statutes have been repealed, the enactments with which I am concerned are in force. There is the first section of the Landlord and Tenant Act, 1730, headed " Persons holding over lands, etc., after expiration of leases, to pay double the yearly value " ; three important conditions must be fulfilled before a landlord can make good his claim. First, the wording being " In case any tenant or tenants for any term for life, lives, or years . . .", the section does not apply to quarterly or weekly tenancies : this was decided by *Lloyd* v. *Rosbee* (1810), 2 Camp. 453. Then, there is a requirement expressed : " After demand made and notice in writing given for delivering up possession thereof " (this can be done before the term actually expires : *Messenger* v. *Armstrong* (1785), 1 Term Rep. 53). And thirdly, the operative words are : " Shall wilfully hold over." The word " wilfully " has, of course, been the subject of much and varying interpretation ; but for the purposes of this enactment, it can be said that, in order to succeed, a landlord has to establish that there is something contumacious about the tenant's attitude : *Wright* v. *Smith* (1805), 5 Esp. 203, which decided this point, has been frequently followed.

Applying this to the three kinds of tenancies mentioned, most controlled residential tenants would be exempt merely by reason of the shortness of their terms. But, apart from that, the " wilfully " condition defeats landlords in such cases. A bold attempt was made to recover double value from a controlled tenant in *Crook* v. *Whitbread* (1919), 35 T.L.R. 522 : the plaintiff landlord, conducting his appeal (to a Divisional Court) in person, claimed double value from a tenant who held first under a three years' agreement expiring in 1905, and then from year to year, and to whom he had given notice expiring at Michaelmas, 1918. The defendant relied on the provisions of what was then s. 1 (3) of the Increase of Rent, etc. (War Restrictions) Act, 1915 : " No order for the recovery of possession of a dwelling-house to which this Act applies . . .," etc. (see now the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)). It was held that it could not be said that the tenant was contumaciously holding over. The point was also taken, and may perhaps be regarded as a stronger one, that in s. 1 of the Landlord and Tenant Act, 1730, the duration of the tenant's liability is expressed to be " for and during the time he, she and they shall so hold over and keep the person or persons *entitled* out of *possession* of the said lands . . ."

But the Act seems to fit agricultural holdings. Tenancies of such, whether granted for fixed terms or not, are determinable by notice to quit ; but to be an agricultural holding, there must be a contract of tenancy, which is a letting of land, etc., for a term of years or from year to year (Agricultural Holdings Act, 1948, ss. 1 (1) and 94 (1)), and the Landlord and Tenant Act, 1730, s. 1, has been held to apply to yearly tenancies (*Doe d. Hull* v. *Wood* (1845), 14 M. & W. 682), while an ordinary notice to quit has been held to satisfy the demand and notice requirement (*Messenger* v. *Armstrong*, *supra*). Consequently, a wilful holding over would be within its purview.

Business premises : there was, of course, no attempt to operate the Act in *Sydney Bolsom Investment Trust, Ltd.* v. *E. Karmios & Co. (London), Ltd.* ; indeed, the tenants were probably too bewildered to be capable of contumacy. But, while a tenant may determine a yearly tenancy by ordinary notice to quit (Landlord and Tenant Act, 1954, s. 24 (2)), the point may some day be argued whether the Landlord and Tenant Act, 1730, s. 1, applies to a case in which a landlord has given a notice to terminate under s. 25 which has not been or not successfully been contested, or an application for a new tenancy. My own view would be that, though more

than two centuries separate the passing of the two Landlord and Tenant Acts, the words " wilfully hold over " would cover the situation.

Double rent

The Distress for Rent Act, 1737, is not primarily concerned with wrongful holding over, but s. 18, after reciting the great inconveniences happening to landlords whose tenants *have power* to determine their lease by giving notice to quit the premises by them holden, and yet refusing to deliver up possession when the landlord hath agreed with another tenant for the same, enacts that in case any tenant shall give notice of his intention to quit the premises by him holden *at a time mentioned in such notice*, shall not *accordingly* deliver up possession *at the time* in such notice contained, he shall thenceforward pay the landlord double the rent or sum which he should otherwise have paid.

It does not appear to have been suggested that the section applied only when a landlord has let to someone else ; but it is clearly limited to cases in which the tenant has taken steps to determine the relationship.

Taking the three classes again : it was held, somewhat unexpectedly, in *Flannagan* v. *Shaw* [1920] 3 K.B. 96 (C.A.) that double rent could be recovered from a controlled tenant who had given notice to quit and stayed on. (That such notice to quit is not in itself a " ground for possession " had been established by *Hunt* v. *Bliss* (1919), 36 T.L.R. 74.) But the decision was under the Increase of Rent, etc. (War Restrictions) Act, 1915, which did not contain the " statutory tenancy " provision introduced by the Increase of Rent, etc., Restrictions Acts, 1920, s. 15 ; and it is certainly arguable that the provision would protect a tenant who, like the lady concerned in *Baird's Executrix* v. *Wylie*, *supra*, changed his mind.

In the case of agricultural holdings, again there seems no reason why a tenant farmer who has himself given notice to quit should not be made liable for double rent if he fails to deliver up possession accordingly.

Part II of the Landlord and Tenant Act, 1954, may mean complications. The keynote of this legislation is struck in the opening words of the first subsection, s. 24 (1) : " A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of the Act . . ." This is immediately followed by " (2) The last foregoing subsection shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant . . ." so that it seems clear that the Distress for Rent Act, 1737, s. 18, would apply if the tenant of business premises held under a periodic tenancy gave and did not act in accordance with a notice to quit. But when we come to fixed term tenancies, the tenant who wishes to put an end to the relationship has to give three months' notice in writing that he " does not desire the tenancy to be continued " if he wants to terminate the tenancy at the agreed date, or, if it is already " continuing," three months' notice in writing expiring on a quarter day (s. 27 (1) and (2)). The latter variety of notice is not characterised even as a notice that the giver " does not desire." Are these documents for the purposes of the 1737 statute notices given by tenants who have power to determine their leases, and are they notices of intention to quit the premises holden ? While there is no authority directly in point—*Johnstone* v. *Hudlestone* (1825), 4 B. & C. 922, merely shows that whatever notice is given must be a valid one—I would submit that the words of s. 18 are wide enough to apply (they were probably meant to cover, say, a notice exercising an option).

R. B.

HERE AND THERE

RISING AGAIN

LET'S see, yes, it's practically eleven years since the hot war cooled down to a cold war and we were left to enjoy the blessings of what (for want of a word) we can call peace. Few parts of London took such a battering during the air raids as the legal quarter. Let's take a walk round and see how they're getting on with the rebuilding. It's odd to think that in order to remember the Inns of Court as they used to be (to remember them effectively, say, as a ten-year-old) one would have to be at least twenty-five now. Well, Gray's Inn lying in the north makes a good starting point for a tour. First there's the great square, which during the war became an abomination of desolation, the Hall and Chapel empty shells, seven of its fourteen houses completely destroyed and the others more or less damaged, a barrage balloon tethered in the middle of what had been the grass plots. Now the Hall is up again, so completely restored that a newcomer would never know it had ever been down ; the gaps in the building line have been closed in and only the shell of the Chapel remains a wreck, converted to the uses of a builder's yard. The new buildings are rather ingenious. Georgian in style to match their neighbours, they yet do not absolutely reproduce their predecessors. There are now usable basements where no usable basements were before, and fewer doorways so as to have larger sets of chambers and offices. One result is that the windows are smaller and less generous-looking but the general effect is harmonious. The one controversial aspect of the rebuilding of the Hall is the new bay window at the south end of the daïs. Some like it, some hate it as spoiling the former character of the building. But, even among those who like it, there is general agreement that there appears to be no good reason why it should not have matched the old window opposite it at the north end. The heavy-handed stonework of the new makes a most disagreeable contrast with the lighter design of the old. In South Square nothing survived but the building by the passage in from Holborn, where Dickens was an office boy. This is to be preserved ; a fellow to it is to be built on the other side and joined to it across the carriageway so as to make a sort of gatehouse to the square. For the rest, the Benchers' rooms adjoining the Hall are a great improvement on the mock-Tudor stone that was there before. Along the east side of the square the basement of the new library is complete and elsewhere excavations and foundation laying proceed apace.

ROUND CHANCERY LANE

CROSS the road to Staple Inn. A flying bomb fell in the garden, wrecking the little Hall and everything else within reach. By a most extraordinary achievement of meticulous reproduction the Inn has been restored to its precise outward semblance. The Patent Office on the south side of the garden has taken a different line and put a completely modern façade on its blasted front. On general principles one would expect this to clash excruciatingly. But it is good, plain and yet imaginative modern and the general effect is quite pleasant. Lincoln's Inn was far less damaged than the other Inns of Court and, passing

through, one would not now guess that it had been damaged at all. Stone Buildings, the part worst hit, are externally as they used to be with welcome internal improvements. The Inn suffered more than the others by the weakening effect of blast, not immediately apparent. This meant that a lot of work had to be done recently on the new Hall, and the northern tower of the Tudor gateway in Chancery Lane is in process of complete rebuilding. Crossing Carey Street to the Law Courts, one sees the northern end of the Divorce block still ruinously jagged. But apart from that, the only scars are round about the patched Chancery Court that had its corridor wall blasted down by a smallish bomb.

EXCELLENT IN PARTS

OVER to the Temple. Here there is enormous activity. All trace of the old Middle Temple Library, blasted out of use, has vanished and the early work on the chambers to rise on the site is well advanced. A great deal of the charm of an old building often consists of the skilful grafting of the newer bits on to the older. It would have been nice if the old library tower could have been grafted on to the new chambers, but they say the stonework was in very bad condition even before the war, so perhaps it wasn't just that nobody had the idea. The temporary library still stands on the site of the buildings that formerly divided Brick Court from Essex Court and already it is getting a familiar venerable patina. Work is starting on the site of the future library in the lower part of Middle Temple Lane on the right-hand side. To make room some chambers undestroyed by bombs were demolished. Their fireplaces and cupboards still cling sadly to a blank wall, remembering cheerful conversations long ago and domestic treasures now dispersed. New Harcourt Buildings are a tremendous improvement on the forbidding gloom of their predecessors. The arch at the north end is also better than the one before. But (if anybody had thought of it) an interesting touch could have been added by giving the chambers above a wooden oriel suggestive of the stern-castle of an old line of battle ship. (After all, the arch is named after Kenneth Carpmael, Q.C., who was once a naval officer.) It would also have given a pleasant effect from the inside in the room used by the Bar Council. Charles Lamb's half of Crown Office Row was pleasant ; the Victorian half was horrible. On balance, the new Crown Office Row is an improvement. Behind, Victorian Elm Court, with its harsh-toned red bricks, was a good riddance, but little Fig Tree Court adjoining was a delight. Now that there is one spacious court on the site of both, could they plant a fig tree there for memory ? Pump Court and the Cloisters, formerly one of the most charming corners of the Temple, is the great disappointment. When one saw the rebuilding of the vanished south side of the court one was at first thankful that it made an attempt to match the old, but the more one sees its heavy-handed treatment the less one likes it. The court is long and narrow and needed at least two spaced-out doorways (not one in the middle and one at the end) to relieve the otherwise long monotonous line of windows. Then there's all the difference in the world between the charming and the imposing. Pump Court was charming and charm did not demand two enormous overblown coats of arms and a great tombstone over one of the doors with the name of Pump Court on it. Similarly, the loftier Cloisters may be more imposing (or they impose on some) but their charm is gone, particularly with that awkward stretch of blank wall between the court and the Inner Temple Hall. Formerly, it was an interesting little corner with a staircase and the windows of an old shop. One would have thought that it would not have been beyond architectural ingenuity so to design the building that this key point should not be left utterly featureless. The Temple Church is repaired, all but the Round, and a great blessing it is to have it cleared of the clutter of pretentious Victorian excrescences. The Master's House is rebuilt as it was. The Inner Temple Hall went down Victorian Gothic and has come up 20th-century Georgian, on the whole an improvement, though on the north side, where the robing rooms are, it has a depressingly municipal look. One mourns the 18th-century charm of old Lamb Building, which stood between the Hall and the Church in the middle of what will in future be one spacious court, but, doubtless, this Middle Temple enclave in the Inner Temple could hardly be reproduced. The bombed library of the Inner Temple matched its hall. One will soon be able to judge the quality of its successor, for work is proceeding fast on it. The crowning mercy in the Temple is that, damaged as it was, Middle Temple Hall could be restored precisely as it was. If that had gone, the heart would have gone out of the place.

RICHARD ROE.

BOOKS RECEIVED

Impartial Medical Testimony. A report by a special committee of the Association of the Bar of the City of New York. pp. ix and 188. 1956. New York and London : The Macmillan Co. £1 7s. 6d. net.

Double Taxation Relief. Explanatory Notes. pp. 31. Issued by the Board of Inland Revenue.

Problems of Public and Private International Law. Transactions of the Grotius Society for the year 1954. Volume 40. pp. xxxi and (with Indexes) 191. 1955. London : The Grotius Society. Price to Non-Members, £1 5s. net.

"Current Law" Income Tax Acts Service [CLITAS] Release 30 : 24th February, 1956. London : Sweet & Maxwell ; Stevens & Sons. Edinburgh : W. Green & Son.

The Law of State Succession. By D. P. O'CONNELL, B.A., LL.M. (N.Z.), Ph.D. (Cantab.), Barrister and Solicitor of the Supreme Court of New Zealand. pp. xl and (with Index) 425. 1956. Cambridge : Cambridge University Press. £2 5s. net.

Birdman of Alcatraz. The Story of Robert Stroud. By THOMAS E. GADDIS. pp. 254. 1956. London : Victor Gollancz, Ltd. 16s. net.

The Rule against Perpetuities. By J. H. C. MORRIS, D.C.L., of Gray's Inn, Barrister-at-Law, and W. BARTON LEACH, LL.B., of the Massachusetts Bar. pp. xlvii and (with Index) 336. 1956. London : Stevens & Sons Ltd. £2 15s. net.

Carter's Reversion Tables. By RAY CARTER, F.R.I.C.S. pp. 8. 1956. London : The Estates Gazette, Ltd. 4s. 6d. net.

Historical Conspectus of Roman Law. By R. W. LEE. pp. vii and 48. 1956. London : Sweet & Maxwell, Ltd. 5s. net.

Rating Valuation Practice. Fourth Edition. By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. pp. xv and (with Index) 376. 1956. London : Stevens & Sons, Ltd. £2 5s. net.

Husband and Wife in English Law. By R. L. TRAVERS, of the Middle Temple, Barrister-at-Law. pp. 112. 1956. London : Gerald Duckworth & Co., Ltd. 7s. 6d. net.

Reflections on Hanging. By ARTHUR KOESTLER. pp. (with Index) 193. 1956. London : Victor Gollancz, Ltd. 12s. 6d. net.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Assent by Executors of Administrator

Sir,—In your publication of the 15th October last, there appeared under "Points in Practice" a problem concerning an assent by an executor of an administrator. Apparently *M S* owned a freehold dwelling-house and died intestate in 1942. Letters of administration were granted to *J S* shortly afterwards, and *J S* died in 1952 having left a will which was proved by the executors therein named.

The querists stated that they did not know if *J S* became beneficially entitled before his death, but that it was contended that the executors of *J S* could execute an assent vesting the property in *G L* on the assumption that in the ten years which elapsed between the deaths of *M S* and *J S* the latter had ceased to hold as administrator and held as trustee so that the property would pass to his executors.

The querists went on to say: "Do you consider that we are safe in relying on such an assumption and accepting an assent without question? Should we insist on a statutory declaration (if one could be obtained) in support of the contention that *J S* held as a trustee at his death? If a declaration cannot in the prevailing circumstances be obtained (as we expect will be the case), can you suggest any other step which might support or strengthen the title? We have suggested that if letters of administration *de bonis non* be obtained of *M S's* estate, the doubt would be completely overcome. Do you think this is necessary or desirable?"

The reply was that a purchaser could not be required to accept the title unless evidence were produced that there had been an implied assent by *J S* to himself as trustee for sale, and that a statutory declaration that the estate was fully administered before 1952, and so held by *J S* as trustee, would normally be accepted; that you did not think an assent should be accepted without this, and that you did not think there was any acceptable alternative. You further stated that in the absence of such satisfactory evidence you agreed that a grant of letters of administration *de bonis non* should be obtained. Finally, you indicated the doubt about the power of a personal representative of a trustee to execute an assent.

It is submitted that the obtaining of a grant of letters of administration *de bonis non* will not necessarily solve the problem involved. The reasons for such submission are set out below.

The querists stated that they did not know if *J S* had become beneficially entitled. That, however, would appear to be something which the solicitors acting for the executors of *J S* ought to know, and it is submitted that this is a matter of vital importance for the following reasons:—

Either *J S* was beneficially entitled, or he was not.

If he were so entitled, then either the estate had been cleared and he became a trustee of the property for his own absolute use and benefit or the estate had not been so cleared.

If *J S* was beneficially entitled and the estate had been cleared and he became a trustee of the property for his own absolute use and benefit, then the legal estate and the beneficial interest would merge and he would become the owner in fee simple (*Re Cook; Beck* v. *Grant* [1948] 1 All E.R. 231).

In those events the property in question would, on the death of *J S*, devolve upon his personal representatives as such as part of the estate of *J S*, and the matter of a grant of letters of administration *de bonis non* would not arise because the property would have ceased to form part of the estate of *M S*.

Hence, it is submitted that the querists should inquire whether or not *J S* had become beneficially entitled as it is an inquiry to which they should have a reply either affirmatively or negatively.

It will be noticed that the submissions above are not concerned with the much debated matter as to whether or not a personal representative who is also beneficially entitled to real property under a will or intestacy must execute an assent in his own favour on completion of administration. Some thought could be given to that aspect of the case under consideration; but it is submitted that, quite apart from this, it has been sufficiently shown that the obtaining of a grant of letters of administration *de bonis non* would not necessarily solve the problem involved in the case under consideration.

However, a few words may be added to consider the position in case *J S* was not beneficially entitled.

In that case, the question would arise whether or not *J S* had ceased to hold the property as administrator and had impliedly assented to himself as a trustee for sale.

Either there was an implied assent or there was not. If there were, then the legal estate would devolve upon the personal representatives of *J S*; if there were not, it would not and a grant of letters of administration *de bonis non* would have to be obtained.

It would follow that whichever of the courses open were adopted it might be wrong, and, consequently, to be on the safe side, both the personal representatives of *J S* and the persons who take out the grant of letters of administration *de bonis non* should join in any conveyance.

One need hardly add that, if the circumstances were such that the persons who take out the grant of letters of administration *de bonis non* were the same persons as the personal representatives of *J S*, the position would be simplified.

C. M. McHALE.

Crewe.

[We agree that the safest course is that mentioned.—ED.]

Capital Punishment

Sir,—Mr. Malcolm Evans, in your issue of the 31st March, may be angling for a "rise," but because the paradox he presents, though a false one, is used as an argument by abolitionists, it should be challenged. The phrase "it is wrong to kill" is a generalisation and is not true. Most human beings believe that it is not wrong to kill (*a*) in war, (*b*) in self-defence, and (*c*) to save a mother in childbirth.

The sentence should read "it is illegal to commit murder; murder has been committed; by common consent of the inhabitants of the United Kingdom, as expressed in their laws, every sane person who commits murder shall be hanged."

Opinions differ as to whether it is expedient to alter the law.

WALTER H. GRAHAM,
ex-Undersheriff.

St. Austell.

Statutory Veterans

Sir,—The Seven Aged Merchant Adventurers to whom your contributor refers [p. 219, *ante*] have some close rivals in three of the four gentlemen who stood for Parliament when the Ballot Act of 1872 was passed and were standing again when the Representation of the People Act, 1949, was enacted. But, alas! the signs of mortality are there. Henry Sydney Smith, an Attorney of Bath, is replaced by Mary Smith, married woman, of the same address—one assumes she is the daughter-in-law of the deceased attorney. Most striking of all is the fact that Viscount Merton is still standing for the Commons in 1949—what a tough old boy the Earl must be!

F. H. E. TOWNSHEND-ROSE.

Osterley, Middlesex.

Mr. William Abercromby, retired solicitor, of Southport, left £39,354.

Mr. Joseph Hunt, solicitor, of Northallerton, left £27,322 (£27,023 net).

Mr. Frank Seaton Ingle, solicitor, of Bath, left £73,480 (£72,782 net).

Mr. Alfred Henry Singleton, retired solicitor, of Birmingham, left £200,914 (£198,739 net).

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

House of Lords

COMPULSORY PURCHASE ORDER: ALLEGATION OF BAD FAITH: NO JURISDICTION TO SET ASIDE

Smith *v.* East Elloe Rural District Council and Others

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Radcliffe and Lord Somervell of Harrow. 26th March, 1956

Appeal from the Court of Appeal ([1955] 1 W.L.R. 380; 99 Sol. J. 235).

The Acquisition of Land (Authorisation Procedure) Act, 1946, provided by s. 1 (2) that a compulsory purchase of certain classes of land (including land owned by local authorities, open spaces ancient monuments, etc.) was to be subject to special procedure laid down by Sched. I, Pt. III, which required, *inter alia*, a certificate by the Minister. Schedule I, Pt. IV, provided by para. 15: "If any person aggrieved by a compulsory purchase order desires to question the validity thereof . . . on the ground that the authorisation of a compulsory purchase thereby granted is not empowered to be granted under this Act [or other Acts] or if any person aggrieved by a compulsory purchase order or a certificate under Pt. III of this schedule desires to question the validity thereof on the ground that any requirement of this Act or of any regulation made thereunder has not been complied with," he may make an application to the court within six weeks. By para. 16: "Subject to the provisions of the last foregoing paragraph a compulsory purchase order or a certificate under Pt. III of this Schedule shall not . . . be questioned in any legal proceedings whatsoever." The plaintiff, who was aggrieved by a compulsory purchase order which had been made and confirmed in relation to certain property of hers, issued a writ against the local authority, its clerk and certain Government departments claiming damages for trespass, an injunction to restrain further trespass and a declaration that the order was procured, made and confirmed in bad faith. The defendants applied by summons to set aside the writ as invalid for want of jurisdiction in view of the prohibition contained in para. 16. The master ordered the writ to be set aside. Havers, J., affirmed his order. The plaintiff appealed, contending that para. 16 was limited to compulsory acquisitions of land under Pt. III of Sched. I, which did not include the land in question. The Court of Appeal dismissed her appeal. She appealed to the House of Lords.

Viscount Simonds said that a comparison of the language of this enactment with that of its predecessors helped neither side and his lordship based his opinion on the very words of the Act. It was said that the words in para. 16, "under Pt. III of this Schedule" qualified not only "a certificate," but also "a compulsory purchase order." But such a construction would produce results so absurd that it should be avoided if it was fairly avoidable. The use of the indefinite article where it occurred for the second time indicated that the words "under Pt. III" qualified only "a certificate." A more serious argument was that, as the order was challenged on the ground that it was made and confirmed wrongfully and in bad faith, para. 16 had no application because it must be construed so as not to oust the jurisdiction of the court where the good faith of the local authority or of the Ministry was impugned. It was submitted that where the words "compulsory purchase order" occurred, they should be read as if "made in good faith" was added to them. Anyone bred in the tradition of the law should have little sympathy with legislative provisions ousting the jurisdiction of the courts, but the words of the Act must be given their proper meaning and it was impossible to qualify them as suggested. It was argued that it was a deep-rooted principle that the Legislature could not be assumed to oust the jurisdiction of the court, particularly where fraud was concerned, except by clear words. But the first of all principles of construction was that plain words must be given their plain meaning. The court could not entertain the action so far as it impugned the validity of the order. But the bad faith or fraud on which an aggrieved person relied was that of individuals and he might have a remedy in damages against them. Accordingly against the clerk the action might proceed, but on the footing that the validity of the order could not be questioned.

Lord Morton of Henryton and Lord Radcliffe agreed in allowing the appeal only so far as the action against the clerk to the council was concerned.

Lord Reid and Lord Somervell of Harrow would have allowed the appeal against all the respondents.

Appeal allowed in part.

Appearances: *Roy Wilson*, Q.C., *F. H. Collier* and *J. A. Crawley* (*A. E. Hamlin*, Sheringham); *Sir Reginald Manningham-Buller*, Q.C., A.-G., *Rodger Winn* and *W. L. Roots* (*Lees & Co.*, for *Mossop & Bowser*, Holbeach; *Solicitor for the Minister of Housing and Local Government*).

[Reported by F. H. Cowper, Esq., Barrister-at-Law] **[2 W.L.R. 888**

PROFITS TAX: REIMBURSEMENT OF PRINCIPAL COMPANY BY SUBSIDIARY: DEDUCTION FOR INCOME TAX

Chloride Batteries, Ltd. *v.* Gahan (Inspector of Taxes)

Viscount Simonds, Lord Reid, Lord Radcliffe and Lord Somervell of Harrow. 26th March, 1956

Appeal from the Court of Appeal ([1955] 1 W.L.R. 277; 99 Sol. J. 203).

Chloride Batteries, Ltd., was a wholly owned subsidiary of Chloride Electrical Storage, Ltd. The subsidiary commenced business on the 1st January, 1950. The principal company served a grouping notice under s. 22 of the Finance Act, 1937, which was accepted by the Inland Revenue Commissioners. Thereafter, for the purposes of profits tax, the profits of the subsidiary were treated as the profits of the principal company. On this basis, the principal company paid £209,437 profits tax for the chargeable accounting period ended 31st December, 1950. The subsidiary paid to the principal company £191,420 "by way of reimbursement of profits tax." The companies then made a joint election under s. 38 (3) of the Finance Act, 1947. The subsidiary claimed that for the purpose of assessment to income tax under Case I, Sched. D, for the years 1949–50, 1950–51 and 1951–52, it was entitled to deduct the whole of the amount of the profits tax paid by the principal company, £209,437, though the claim was, in fact, limited to £191,420, viz., the amount which the subsidiary would have had to pay if no grouping notice had been served and which it appeared to the directors of the subsidiary that they ought to reimburse to the principal company. The Crown contended that only the difference (viz., £77,695) between the amount which was actually assessed on the principal company and the amount which the company would have been called on to pay if no notice had been served, £131,742, could be deducted by the subsidiary. The Special Commissioners and Upjohn, J., upheld the taxpayer company. The Court of Appeal reversed this decision. The company appealed to the House of Lords.

Viscount Simonds said that the answer to the question depended on the construction of a few words in the Finance Act, 1947. The short question was: What was the meaning of the words "an amount by way of reimbursement of profits tax which by virtue of the notice having been given is payable by that company" in s. 38 (3) (*b*)? The notice referred to was the notice given under s. 22 of the Act of 1937. The purpose of s. 38 (3) was to give the payment dealt with there certain consequences for tax purposes. The use of the word "reimbursement" suggested that the sum paid by the subsidiary was one for which the principal company would not, but for the notice, have been liable. The principal company paid £209,437 profits tax in respect of the relevant accounting period. If there had been no notice its liability would have been £131,742. As the result of the notice its liability was £209,437. The amount of profits tax which became payable "by virtue of the notice" was the difference between those amounts, viz., £77,695. The appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

Appearances: *Sir Andrew Clark*, Q.C., *F. Heyworth Talbot*, Q.C., and *H. Major Allen* (*Simpson, North, Harley & Co.*, for *March, Pearson & Green*, Manchester); *Sir James Tucker*, Q.C., *Sir Reginald Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*).

[Reported by F. H. Cowper, Esq., Barrister-at-Law] **[1 W.L.R. 391**

Court of Appeal

LANDLORD AND TENANT: RENT PAYABLE EITHER IN GOLD STERLING OR BANK NOTES TO EQUIVALENT VALUE

Treseder-Griffin and Another *v.* Co-operative Insurance Society, Ltd.

Denning and Morris, L.JJ., and Harman, J. 20th March, 1956

Appeal from Lord Goddard, C.J. ([1955] 3 W.L.R. 996; 99 SOL. J. 912).

A lease dated 30th December, 1938, under which two shops were demised to the then lessees for ninety-nine years from 24th June, 1930, provided in the reddendum clause for the payment by the lessee "yearly during the said term either in gold sterling or Bank of England notes to the equivalent value in gold sterling the rent of £1,900 . . . by equal quarterly payments . . ." In 1953 the lease was assigned to the present defendants, and later the lessors sued them for five quarters' rent based on the value in sterling of 475 gold sovereigns on each quarter day and sought a declaration that they were entitled thereafter to receive 475 gold sovereigns or their value in bank notes on the due dates. Lord Goddard, C.J., granted a declaration that they were entitled to receive each quarter 475 gold sovereigns or alternatively such sum in Bank of England notes as represented the value of 475 gold coins of Great Britain of the standard weight and fineness in sterling in London at the date on which payment was due. The lessees appealed.

DENNING, L.J., said that if 1,900 gold sovereigns were melted down and their gold content sold in the bullion market, they would be worth, as at 29th September, 1955, £5,610 6s. 1d., while if they were sold as coins they would be worth even more—£6,412 10s. That was the value which the lessors claimed and to which the order of Lord Goddard, C.J., entitled them. His lordship was not sure that a gold clause in a domestic contract was lawful. A man who stipulated for a pound must take a pound when payment was made, whatever the pound was worth at that time. In the present clause, the phrase "gold sterling" must mean gold coins of sterling currency. The lessors, accepting that meaning, thence sought to say that the rent consisted of 1,900 gold sovereigns or their equivalent in notes. They were regarding the 1,900 sovereigns as a commodity. His lordship thought that that was fallacious, for the phrase "gold sterling" in the clause did not mean gold coins regarded as a commodity, but as sterling currency; and as such they were worth £1,900, no more and no less. The lessors could not possibly recover the hoarding value of 1,900 sovereigns, nor the value of the gold content. The point could be made clear by asking here the question asked in *Feist* v. *Societe Intercommunale Belge d'Electricite* [1934] A.C. 161, at p. 163: "Is the intention of those words to fix the amount to be paid, or to determine the manner in which an amount already fixed is to be discharged?" His answer was that the amount to be paid was here fixed by the clause at "one thousand nine hundred pounds." The remaining words, "either in gold sterling or in Bank of England notes to the equivalent value in gold sterling" merely determined the manner in which the £1,900 already fixed was to be discharged. By contrast, the clause in *Feist's* case, *supra*, treated gold coin as a commodity and not as currency. Furthermore, s. 6 of the Coinage Act, 1870, in his lordship's opinion, made it unlawful for a creditor to stipulate for payment of a money debt in any other way than in lawful currency. If the lessors' construction of this clause was right, there would not be a sum certain due as rent, and there would never be any "equal quarterly payments," for the price of gold was always on the move. In his view, the rent payable under the lease was £1,900 per annum, no more and no less. He was glad to be able to come to that conclusion because of the detrimental effect which any other view would have on our sterling currency. He would allow the appeal accordingly.

MORRIS, L.J., concurring, said that in its context the word "value" in this clause must be interpreted as meaning nominal value, in which case there could be compliance with the terms of the lease; whereas difficulties and anomalies arose if the words of the reddendum were construed as denoting the selling price of sovereigns.

HARMAN, J., dissenting, said that he could not accept the argument for the lessees that as the sovereign as a current coin had never had a greater value than 20s. that from a currency point of view must be regarded as its value, so that gold sterling might be satisfied at 20s. or one £1 bank note to the £, for that would deprive all the words about gold sterling of any effect. What were the alternatives? His lordship could not agree with the order of the Lord Chief Justice that "value" meant the price of sovereigns purchased from an authorised dealer, for that produced a result which could not have been within the contemplation of the parties, who could not have foreseen the circumstances which had lately forced the value of the sovereign far above the intrinsic value of its gold content. But if these words could properly refer to the intrinsic value of the gold content of the sovereign, the clause was in its true sense a gold clause, within the meaning of the authoritative pronouncements of the House of Lords in *Feist's* case, *supra*. His lordship saw no reason why parties to a domestic document should not adopt that method of evaluating their obligations, and nothing in public policy which should forbid a landlord parting with his land for a long term of years from attempting to protect himself against fluctuations in the value of money. He would vary the order of Lord Goddard, C.J., by substituting for the declaration which he had made some such words as "such sum in Bank of England notes as represents the value of the gold content of 475 sovereigns calculated at the London rate current at the date when payment is due." Appeal allowed. Leave to appeal.

APPEARANCES: *Neville Gray*, Q.C., and *R. J. S. Thompson* (*N. C. Wright*, Manchester); *Eustace Roskill*, Q.C., and *Hugh Griffiths* (*Wrentmore & Sons*, for *Ewan G. Davies*, Cardiff).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 866**

Queen's Bench Division

BUILDING REGULATIONS: APPLICATION TO INSTALLATION OF LIFT: INJURY TO WORKMAN: RESPONSIBILITY OF CONTRACTORS AND SUB-CONTRACTORS

Simmons *v.* Bovis, Ltd., and Another

Barry, J. 9th February, 1956

Action.

Contractors for whom the plaintiff worked as foreman bricklayer were engaged on the construction of a building. They engaged the services of sub-contractors for the installation of a lift in the building, the arrangement between them being that the contractors should erect the necessary scaffolding. While the main building was still incomplete the brickwork of the lift shaft was finished and the contractors' workmen had left in the lift shaft certain tubular posts running from the front to the rear of the shaft, and necessary for the work of installing the lift. The first step in the installation of the lift was the erection of the main lift runners and for this purpose two of the sub-contractors' workmen, accompanied by the plaintiff and *P*, the contractors' foreman scaffolder, visited the site in order to mark the points at which the bricklayers should bore holes in the brickwork of the shaft. There were at the time no working platform and no planks across the tubular posts at the first-floor level. The plaintiff and *P* placed a long ladder for the sub-contractors' workmen to climb from the base of the shaft to the first-floor level and make their marks on the walls. *P* then decided to lower another ladder from the top of the lift shaft and asked the plaintiff to receive it at the first floor. By this time the sub-contractors' workmen on their own initiative had erected at the first-floor level a totally inadequate working platform consisting of planks, the majority of which were too short to rest on all three of the tubular posts and which consequently had a number of "trap ends." In order to receive the ladder the plaintiff stepped on the platform, whereupon the planks tipped up, causing him to fall and suffer injury. In an action against the contractors and sub-contractors the plaintiff claimed damages on the ground of breach of statutory duty and negligence.

BARRY, J., said that it was plain that the platform from which the plaintiff fell infringed a number of the Building (Safety, Health and Welfare) Regulations, 1948. If the regulations applied, the contractors were responsible in damages for such breaches. The sub-contractors, who were immediately responsible for the erection of the platform, contended that the regulations did not apply to their work, as the installation of a lift did not form part of the construction of a building, but the installation of plant in a building; but it was shown in *Elms* v. *Foster*

Wheeler, Ltd. [1954] 1 W.L.R. 1071 that an operation which might be properly described as the installation of plant might also be part of a building operation, and, tested by the observations in that case, the regulations applied to this particular work. By reg. 4 "every contractor and employer of workmen who erects or alters any scaffold" had to comply with a number of the regulations, and the sub-contractors had contended that that applied only to such employers (which they were not) whose contractual duty it was to erect scaffolds, that being the duty of the main contractors. But the true position was that the sub-contractors did erect the platform and did so quite reasonably in order to get on with the work quickly; the regulations applied to them. Both parties were liable both under the regulations and at common law; the plaintiff had been 10 per cent. to blame, and there would be judgment for £14,002. Judgment for the plaintiff.

APPEARANCES: *F. Elwyn Jones*, Q.C., and *W. L. Mars-Jones* (*O. H. Parsons*); *Edmund Davies*, Q.C., *W. D. T. Hodgson* and *P. L. W. Owen* (*James Chapman & Co.*, Manchester); *H. V. Lloyd-Jones*, Q.C., and *R. Geraint Rees* (*Laces & Co.*, Liverpool).

[Reported by P. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 381

MASTER AND SERVANT: CIVIL SERVANT INJURED BY NEGLIGENCE: STATUS OF CIVIL SERVANT: CLAIM BY CROWN FOR LOSS OF SERVICES

Inland Revenue Commissioners *v.* Hambrook

Lord Goddard, C.J. 14th March, 1956

Action.

On 26th July, 1952, a tax officer, an established civil servant, suffered injuries in a road accident for which he was one-third and the defendant two-thirds to blame, and in consequence was away from his employment until 18th May, 1953. During his absence he received sick pay from the plaintiffs, who claimed damages *per quod servitium amisit*.

LORD GODDARD, C.J., said that the question was whether the Crown could maintain such an action in relation to an established civil servant. In *A.-G.* v. *Valle-Jones* [1935] 2 K.B. 209 the point had been conceded in respect of an airman, while in *A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.* [1955] A.C. 457 it was held that the action did not lie for the loss of services of a police constable; but that case differed from the present because a police constable was not in the ordinary category of a Crown servant. The action was anomalous and appeared to derive from the time of villeinage, when a lord had a proprietary interest in his villeins, and later in his servants. That service *de facto*, though not under a contract, was sufficient was clear from the seduction and abduction cases, but having regard to its nature and origin the action was not one which the courts should be acute to extend (see the *New South Wales* case, *supra*). An established civil servant, whatever his grade, was an officer in the civil employment of the Crown, and his employment could be terminated at pleasure except in special cases provided for by law; the cases indicated that, in the absence of some special term, there was no contractual relationship. Employment depended not on a contract with the Crown, but on appointment by the Crown. It was argued that to support such an action it was not necessary to prove service under a contract; *de facto* service was enough; but the cases supporting that contention were concerned with the seduction or abduction of servants or daughters engaged in menial activities, and there was some, even if almost fictitious, relationship of master and servant. Having regard to the *New South Wales* case, *supra*, the relationship on which the action *per quod* rested was wholly different from that of the Crown and an established civil servant whose duties were of a public nature and were in part laid down by statute. It was next contended that, the payment of sick pay being voluntary, it could not be recovered in law as damages. That contention succeeded; it had the support of Lord Sumner in *The s.s. Amerika* [1917] A.C. 38, and the decision to the contrary in the *Valle-Jones* case, *supra*, could not be supported. It had been argued that the Crown was entitled to recover the whole of the wages lost even though the injured man himself could only recover two-thirds; if that argument was sound, it would be unjust to the defendant and add another to the many anomalies in this class of action. Finally, if the action lay, it made no difference that the injury occurred out of working hours; were it otherwise, the seduction cases could not have succeeded. Judgment for the defendant.

APPEARANCES: *Sir H. Hylton-Foster*, Q.C., S.-G., *Sir F. Soskice*, Q.C., *Sir R. Hills* and *R. Winn* (*Solicitor of Inland Revenue*); *N. R. Fox-Andrews*, Q.C., and *H. Edmunds* (*White and Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 919

Court of Criminal Appeal

CRIMINAL LAW: FALSE ACCOUNTS SUBMITTED TO INSPECTOR OF TAXES: WHETHER COMMON-LAW MISDEMEANOUR

R. *v.* Hudson

Lord Goddard, C.J., Hilbery and Byrne, JJ.

9th March, 1956

Appeal against conviction.

A taxpayer was convicted on eight counts of an indictment charging him with making false statements to the prejudice of the Crown and the public revenue with intent to defraud, by causing to be submitted to an income tax inspector, with intent to defraud, accounts showing the profits of his business over a number of years to be substantially less than they in fact were, and by delivering to the inspector a certificate of disclosure of facts relating to his tax liability which was false to his knowledge. He appealed against his conviction on the ground that the offence charged was not one known to the law.

LORD GODDARD, C.J., said that though the matters charged were not mentioned in the Income Tax Acts or the Perjury Act, 1911, there was no reason why they should not be prosecuted if they were offences at common law (*R.* v. *J* [1933] N.I. 73). In both Hawkins' and East's Pleas of the Crown it was stated that all frauds affecting the Crown and the public at large were indictable, and in *R.* v. *Bembridge* (1783), 22 St. Tr. 1, Lord Mansfield, C.J., laid down that fraud on the public by an individual was indictable, though it might be otherwise if the particular fraud had been by one subject on another. The same had been held by Bray, J., in *R.* v. *Bradbury* (1920: unreported), and the form of indictment then used had been used ever since without being challenged in the Court of Criminal Appeal. What had been done was and always had been a common-law offence. Appeal dismissed.

APPEARANCES: *N. E. Mustoe*, Q.C., and *V. Durand* (*Jaques and Co.*, for *Ollard, Ollard & Sessions*, Wisbech); *Sir R. Manningham-Buller*, Q.C., A.-G., *R. Elwes*, Q.C., and *J. A. Grieves* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 914

Mr. G. DAY ADAMS, solicitor, of Leicester, and past-president of the Leicester Law Society, has been elected chairman of the Association of Provincial Law Societies.

Mr. R. H. HALL has been appointed assistant solicitor to Hornsey Council in succession to Mr. A. Langmaid, who has resigned.

The Queen has been pleased to approve the appointment of Mr. C. J. HAMMETT, Senior Magistrate, Fiji, to be Puisne Judge, Fiji. Mr. Hammett's name was incorrectly given in our previous note of this appointment.

The retirement of Mr. John Henry Latham Brewer, clerk to the Barnstaple magistrates and to the Lynton magistrates, has been announced.

Mr. Alwyn P. Roberts, solicitor, of Liverpool, was married on 24th March to Miss Mavis Rehill, of Huyton.

Mr. Peter Dixon Thorp, solicitor, of Ossett, Yorkshire, was married on 24th March to Miss Shirley Woodruff Fordham, of Wakefield.

Mr. F. H. Verrall, solicitor, of Worthing, left £99,754 (£97,677 net).

IN WESTMINSTER AND WHITEHALL

PARLIAMENT

Parliament reassembled on 10th April after the Easter Recess.

STATUTORY INSTRUMENTS

Agriculture (Poisonous Substances) Regulations, 1956. (S.I. 1956 No. 445.) 8d.

Air Navigation (Second Amendment) Order, 1956. (S.I. 1956 No. 421.)

Aliens (Approved Ports) (No. 2) Order, 1956. (S.I. 1956 No. 479.)

Bath Corporation Water Order, 1956. (S.I. 1956 No. 450.)

Civil Defence (Designation of the Minister of Transport and Civil Aviation) (Amendment) Order, 1956. (S.I. 1956 No. 419.)

Civil Defence (Fire Services) (Water) Regulations, 1956. (S.I. 1956 No. 480.) 5d.

Civil Defence (Fire Services) (Water) (Scotland) Regulations, 1956. (S.I. 1956 No. 463 (S. 23).) 5d.

Civil Defence (Shelter) (Maintenance) Regulations, 1956. (S.I. 1956 No. 469.)

Civil Defence (Shelter) (Maintenance) (Scotland) Regulations, 1956. (S.I. 1956 No. 464 (S. 24).)

Coal Distribution (Amendment) Order, 1956. (S.I. 1956 No. 444.)

Coal-Mining (Subsidence) (Rateable Value) Order, 1956. (S.I. 1956 No. 437.)

County Court (Amendment) Rules, 1956. (S.I. 1956 No. 471 (L. 3).) See p. 267, *ante*.

County of Inverness (Allt Duisdale, Skye) Water Order, 1956. (S.I. 1956 No. 408 (S. 18).) 5d.

Draft **Fencing of Abrasive Wheels** Special Regulations, 1956.

Foreign Compensation (Financial Provisions) Order, 1956. (S.I. 1956 No. 412.)

Foreign Marriage (Amendment) Order, 1956. (S.I. 1956 No. 413.)

Higham Ferrers and Rushden Water Board (Easton Maudit) Water Order, 1956. (S.I. 1956 No. 443.) 5d.

Hill Sheep Subsidy Payment (England and Wales) Order, 1956. (S.I. 1956 No. 456.)

Hill Sheep Subsidy Payment (Northern Ireland) Order, 1956. (S.I. 1956 No. 457.)

Hill Sheep Subsidy Payment (Scotland) Order, 1956. (S.I. 1956 No. 435 (S. 22).)

Huddersfield Water Order, 1956. (S.I. 1956 No. 405.) 5d.

Hull and East Yorkshire River Board (Abolition of the Commissioners of Sewers for the East Parts of the East Riding of the County of York) Order, 1956. (S.I. 1956 No. 454.) 5d.

Huntingdon and Godmanchester Joint Sewerage Order, 1956. (S.I. 1956 No. 430.) 8d.

Importation of Raw Vegetables (Scotland) Order, 1956. (S.I. 1956 No. 407 (S. 17).)

Lincolnshire River Board (Alteration of Boundaries of the Skegness District Internal Drainage District) Order, 1956. (S.I. 1956 No. 466.) 5d.

Lincolnshire River Board (Alteration of Boundaries of the Witham Fourth District Internal Drainage District) Order, 1956. (S.I. 1956 No. 467.) 5d.

Mansfield Corporation Water Order, 1956. (S.I. 1956 No. 426.) 5d.

Merchant Shipping (Light Dues) Order, 1956. (S.I. 1956 No. 422.)

Milk Distributive Wages Council (England and Wales) Wages Regulation Order, 1956. (S.I. 1956 No. 440.) 8d.

Nene River Board (Alteration of Boundaries of the Wingland Internal Drainage District) Order, 1956. (S.I. 1956 No. 455.) 5d.

Paper Bag Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1956. (S.I. 1956 No. 474.) 6d.

Patents Appeal Tribunal (Amendment) Rules, 1956. (S.I. 1956 No. 470 (L. 2).)

Police Pensions (Scotland) Regulations, 1956. (S.I. 1956 No. 434 (S. 21).) 8d.

Prevention of Damage by Pests (Application to Shipping) (Amendment No. 2) Order, 1956. (S.I. 1956 No. 420.)

Purchase Tax (No. 2) Order, 1956. (S.I. 1956 No. 485.)

Road Haulage Wages Council Wages Regulation (Amendment) Order, 1956. (S.I. 1956 No. 461.) 6d.

Royal Irish Constabulary (Widows' Pensions) Regulations, 1956. (S.I. 1956 No. 427.) 6d.

Rubber Manufacturing Wages Council (Great Britain) Wages Regulation Order, 1956. (S.I. 1956 No. 439.) 6d.

St. Helena Order in Council, 1956. (S.I. 1956 No. 414.) 6d.

Stopping up of Highways (Berkshire) (No. 2) Order, 1956. (S.I. 1956 No. 400.)

Stopping up of Highways (Herefordshire) (No. 1) Order, 1956. (S.I. 1956 No. 449.)

Stopping up of Highways (Lincolnshire—Parts of Kesteven) (No. 1) Order, 1956. (S.I. 1956 No. 458.)

Stopping up of Highways (Middlesex) (No. 2) Order, 1956. (S.I. 1956 No. 459.)

Stopping up of Highways (Nottinghamshire and West Riding of Yorkshire) (No. 1) Order, 1956. (S.I. 1956 No. 447.)

Stopping up of Highways (West Riding of Yorkshire) (No. 9) Order, 1956. (S.I. 1956 No. 451.)

Stopping up of Highways (Worcestershire) (No. 4) Order, 1956. (S.I. 1956 No. 448.)

Sugar Industry (Provision For Research and Education in the growing of Sugar Beet in Great Britain) Order, 1956. (S.I. 1956 No. 465.) 5d.

Togoland under United Kingdom Trusteeship (Plebiscite) (Amendment) Order in Council, 1956. (S.I. 1956 No. 416.)

Town and Country Planning (Grants) (Scotland) Regulations, 1956. (S.I. 1956 No. 410 (S. 20).) 6d.

Trinidad and Tobago (Electoral Provisions) Order in Council, 1956. (S.I. 1956 No. 415.)

Wear and Tees River Board (Alteration of Boundaries of the Newbiggin and Billingham Drainage District) Order, 1956. (S.I. 1956 No. 453.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

SOCIETIES

The UNION SOCIETY OF LONDON announces the following debates to be held in the Common Room, Gray's Inn, at 8 p.m.: 18th April, "That this House approves the Budget"; 25th April, "That this House regrets it did not have a public-house education"; and 2nd May, "That this House is of the opinion that Messrs. Bulganin and Khrushchev need not have come."

At the 137th annual general meeting of the BIRMINGHAM LAW SOCIETY held on 28th March, the following were installed in office for the forthcoming year: president, Mr. Philip H. Vernon; vice-president, Mr. G. M. King (Stourbridge); joint hon. secretaries, Mr. Harold F. Rogers and Mr. D. C. Stevens.

NOTES AND NEWS

Honours and Appointments

Mr. JOHN BOWRON, solicitor, of Worthing, has been appointed assistant deputy coroner for the Horsham and Worthing district.

Miscellaneous

The Northumberland National Park (Designation) Order made by the National Parks Commission last September, has been confirmed with two modifications.

DEVELOPMENT PLANS

(Other development plans : see p. 274, ante.)

LEICESTER DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Leicester. The plan, as approved, will be deposited in the Town Hall, Leicester, for inspection by the public.

CUMBERLAND COUNTY COUNCIL DEVELOPMENT PLAN

On 30th April, 1955, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at The Courts, Carlisle, and certified copies or extracts of the plan so far as it relates to the under-mentioned districts have also been deposited at the places mentioned below :—

Borough of Whitehaven—Town Hall, Whitehaven.
Borough of Workington—Town Hall, Workington.
Urban District of Cockermouth—Town Hall, Cockermouth.
Urban District of Maryport—Town Hall, Maryport.
Urban District of Penrith—Town Hall, Penrith.
Rural District of Alston with Garrigill—Martins Bank Chambers, Alston.
Rural District of Border—7 Victoria Place, Carlisle.
Rural District of Cockermouth—Holmewood, Cockermouth.
Rural District of Ennerdale—Council Chambers, Cleator.
Rural District of Millom—Market Square, Millom.
Rural District of Penrith—Mansion House, Penrith.
Rural District of Wigton—Council Offices, Wigton.

The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. Mondays to Fridays inclusive, and 9 a.m. and 12 noon on Saturdays. The plan became operative as from 22nd March, 1956, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 22nd March, 1956, make application to the High Court.

An agreement between the United Kingdom and India relating to relief from double estate duty was signed at New Delhi on 3rd April, 1956. A draft Order in Council containing the full text will be published in due course by H.M. Stationery Office.

ROYAL COMMISSION ON COMMON LAND

The Royal Commission on Common Land has decided to visit a number of typical commons in various parts of the country in order to acquire a better knowledge at first hand of the practical problems connected with them. It will also, where appropriate, hold public meetings locally for the hearing of evidence. In accordance with this decision it has been arranged to hold a public sitting in the Council Chambers, Guildhall, Launceston, Cornwall, at 11 a.m. on 16th May. On the following day the commission will visit parts of Bodmin Moor and inspect some of the reclamation work which has been undertaken by the Cornwall Commoners' Association.

Persons wishing to submit evidence to the Royal Commission are invited in the first instance to send their views in writing to the Secretary of the Royal Commission, at 26 Sussex Place, London, N.W.1. The commission will decide in the light of written evidence received which witnesses it wishes to invite to give supplementary oral evidence.

The commission has also arranged the following public sittings in London :—

Witness	*Date and time of hearing*	*Place*
Commons, Open Spaces and Footpaths Preservation Society	18th April, 12 noon to 1 p.m. 18th April, 2.30 p.m. to 4.45 p.m.	26 Sussex Place, N.W.1.
Mr. Archer Baldwin, M.P.	19th April, 11 a.m. to 1 p.m.	26 Sussex Place, N.W.1.
The Rural Reconstruction Association has been invited	19th April, 2.30 p.m. to 4 p.m.	26 Sussex Place, N.W.1.
Forestry Commission	2nd May, 12 noon to 1 p.m. 2nd May, 2.30 p.m. to 4.45 p.m.	26 Sussex Place, N.W.1.
To be announced later	3rd May, 10.30 a.m. to 1 p.m. 3rd May, 2.30 p.m. to 4 p.m.	26 Sussex Place, N.W.1.

The Royal Commission will not meet in London early in April as it has arranged to visit some areas of common land in the counties of Cambridge and Bedfordshire.

CASES REPORTED IN VOL. 100

24th March to 14th April, 1956

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